

By: Hughes

S.B. No. 1052

A BILL TO BE ENTITLED

AN ACT

relating to debt cancellation agreements offered in connection with certain loans and retail installment contracts and to amounts charged for certain agreements offered in connection with certain loans and retail installment contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 342.4021(a) and (e), Finance Code, are amended to read as follows:

(a) In connection with a loan made under this chapter that is subject to Section 342.201(d) or 342.301(c), a lender may offer to the borrower:

(1) a debt suspension agreement or debt cancellation agreement under similar terms and conditions as such an agreement may be offered by a bank or savings association; or

(2) a debt cancellation agreement under Chapter 354.

(e) The amount charged for a product authorized by Subsection (a) or (b) may not exceed five percent of the amount financed pursuant to the loan made under this chapter ~~[must be reasonable]~~.

SECTION 2. Subchapter H, Chapter 345, Finance Code, is amended by adding Section 345.358 to read as follows:

Sec. 345.358. DEBT CANCELLATION AGREEMENT. A debt cancellation agreement under Chapter 354 may be offered in connection with a retail installment contract or retail charge

1 agreement.

2 SECTION 3. Section 348.124(a), Finance Code, is amended to  
3 read as follows:

4 (a) In connection with a retail installment transaction  
5 under this chapter, a retail seller may offer to the retail buyer a  
6 debt cancellation agreement under Chapter 354, including a  
7 guaranteed asset protection waiver or similarly named agreement.  
8 The retail seller may not require that the purchase of a debt  
9 cancellation agreement by the retail buyer be made in order to enter  
10 into a retail installment transaction.

11 SECTION 4. Subchapter G, Chapter 348, Finance Code, is  
12 redesignated as Chapter 354, Finance Code, and amended to read as  
13 follows:

14 CHAPTER 354 [SUBCHAPTER G]. CERTAIN DEBT CANCELLATION AGREEMENTS

15 Sec. 354.001. DEFINITIONS. In this chapter:

16 (1) "Contract" means a retail installment contract  
17 made under Chapter 345 or 348.

18 (2) "Covered item" includes a motor vehicle.

19 (3) "Loan" means:

20 (A) a loan made under Chapter 342; or

21 (B) a loan to which Chapter 342 does not apply  
22 solely because the loan provides for a rate of interest that is 10  
23 percent a year or less.

24 (4) "Motor vehicle" includes a self-propelled or towed  
25 vehicle designed for personal use, including an automobile, truck,  
26 motorcycle, recreational vehicle, all-terrain vehicle, snowmobile,  
27 camper, boat, personal watercraft, and personal watercraft

trailer.

Sec. 354.002 [~~348.601~~]. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) This chapter [~~subchapter~~] applies only to a debt cancellation agreement that includes insurance coverage as part of the borrower's or retail buyer's responsibility to the lender or holder.

(b) The amount charged for a debt cancellation agreement made in connection with a loan or [~~retail installment~~] contract may not exceed five percent of the amount financed pursuant to the loan or [~~retail installment~~] contract. [~~Section 348.124(c) does not apply to a debt cancellation agreement regulated under this subchapter.~~]

(c) The debt cancellation agreement becomes a part of or a separate addendum to the loan or [~~retail installment~~] contract and remains a term of the loan or [~~retail installment~~] contract on the assignment, sale, or transfer by the lender or holder.

Sec. 354.003 [~~348.602~~]. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE. (a) In addition to the provisions required by Section 354.004 [~~348.603~~], a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the lender's or holder's acceleration of the loan or [~~retail installment~~] contract;

(2) if the covered item is a motor vehicle, any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the

1 motor vehicle;

2 (3) if the covered item is a motor vehicle, any act of  
3 gross negligence by an authorized driver that directly results in  
4 the total loss of the motor vehicle;

5 (4) conversion, embezzlement, or concealment by any  
6 person in lawful possession of the covered item [~~motor vehicle~~];

7 (5) lawful confiscation by an authorized public  
8 official;

9 (6) if the covered item is a motor vehicle, the  
10 operation, use, or maintenance of the motor vehicle in any race or  
11 speed contest;

12 (7) war, whether or not declared, invasion,  
13 insurrection, rebellion, revolution, or an act of terrorism;

14 (8) normal wear and tear, freezing, or mechanical or  
15 electrical breakdown or failure;

16 (9) use of the covered item [~~motor vehicle~~] for  
17 primarily commercial purposes;

18 (10) damage that occurs after the covered item [~~motor~~  
19 ~~vehicle~~] has been repossessed;

20 (11) damage to the covered item [~~motor vehicle~~] before  
21 the purchase of the debt cancellation agreement;

22 (12) if the covered item is a motor vehicle, unpaid  
23 insurance premiums and salvage, towing, and storage charges  
24 relating to the motor vehicle;

25 (13) damage related to any personal property attached  
26 to or within the covered item [~~motor vehicle~~];

27 (14) damages associated with falsification of

documents by any person not associated with the lender or retail seller or other person canceling the borrower's or retail buyer's obligation;

(15) any unpaid debt resulting from exclusions in the borrower's or retail buyer's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered item [~~motor vehicle~~] by the borrower or retail buyer only if the borrower or retail buyer voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered item [~~motor vehicle~~] to the extent that the relinquishment shows intent to forsake and desert the covered item [~~motor vehicle~~] so that the covered item [~~motor vehicle~~] may be appropriated by any other person;

(17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and

(18) any loss occurring outside the United States or outside the United States and Canada.

(b) An exclusion of loss or damage not listed in Subsection (a) may be included in a debt cancellation agreement only if the exclusion is disclosed in plain, easy to read language.

Sec. 354.004 [~~348.603~~]. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. A debt cancellation agreement must state:

(1) the contact information of the lender or the retail seller and [~~the~~] holder, and any administrator of the agreement;

(2) the name and address of the borrower or retail buyer;

(3) the cost and term of the debt cancellation agreement;

(4) the procedure the borrower or retail buyer must follow to obtain benefits under the terms of the debt cancellation agreement, including a telephone number and address where the borrower or retail buyer may provide notice under the debt cancellation agreement;

(5) the period during which the borrower or retail buyer is required to notify the lender or the retail seller or [~~the~~] holder, or any administrator of the agreement, of any potential loss under the debt cancellation agreement for total loss or theft of the covered item [~~motor vehicle~~];

(6) if the covered item is a motor vehicle, that in order to make a claim, the borrower or retail buyer must provide or complete some or all of the following documents and provide those documents to the lender or the retail seller or [~~the~~] holder, or any administrator of the agreement:

(A) a debt cancellation request form;

(B) proof of loss and settlement payment from the borrower's or retail buyer's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(C) verification of the borrower's or retail buyer's primary insurance deductible;

(D) a copy of any police report filed in connection with the total loss or theft of the motor vehicle; and

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) but ~~or~~ required by the lender or the retail seller or ~~[, the]~~ holder, or any administrator of the agreement, is ~~[not]~~ required to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the lender or the retail seller or ~~[, the]~~ holder, or any administrator of the agreement, may inspect the borrower's or retail buyer's covered item ~~[motor vehicle]~~;

(9) that the lender or the retail seller or holder will cancel all or part of the borrower's or retail buyer's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered item ~~[motor vehicle]~~;

(10) the method to be used to calculate refunds;

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a covered item ~~[motor vehicle]~~;

(12) that purchase of a debt cancellation agreement is not required for the borrower or retail buyer to obtain an extension of credit and will not be a factor in the credit approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the borrower or retail buyer must provide a written request to cancel to the lender or the retail seller or ~~[, the]~~ holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered item

~~[motor vehicle]~~ has not occurred, the borrower or retail buyer has 30 days from the date of the loan or ~~[retail installment]~~ contract or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund;

(15) that the borrower or retail buyer may file a complaint with the commissioner, and include the address, phone number, and Internet website of the Office of Consumer Credit Commissioner; and

(16) that the lender or holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of a covered item ~~[motor vehicle]~~, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS LOAN OR CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE COVERED ITEM ~~[VEHICLE]~~ AS STATED IN THE DEBT CANCELLATION AGREEMENT."

~~[Sec. 348.604. APPROVAL OF FORMS FOR DEBT CANCELLATION AGREEMENTS. (a) Debt cancellation agreement forms must be submitted to the commissioner for approval. Debt cancellation agreement forms may include additional language to supplement the terms of the debt cancellation agreement as required by this subchapter.~~

~~[(b) If a debt cancellation agreement form is provided to the commissioner for approval, the commissioner has 45 days to approve the form or deny approval of the form. If after the 45th day the commissioner does not deny the form, the form is considered~~



1 ~~approved.~~

2 ~~[(c) If the debt cancellation agreement form is approved by~~  
3 ~~the commissioner or considered approved as provided by Subsection~~  
4 ~~(b), the terms of the debt cancellation agreement are considered to~~  
5 ~~be in compliance with this subchapter.~~

6 ~~[(d) The commissioner may deny approval of a form only if~~  
7 ~~the form excludes the language required by Sections 348.602 and~~  
8 ~~348.603 or contains any inconsistent or misleading provisions. All~~  
9 ~~form denials may be appealed to the finance commission.~~

10 ~~[(e) If after approval of a form the Office of Consumer~~  
11 ~~Credit Commissioner discovers that approval could have been denied~~  
12 ~~under Subsection (d), the commissioner may order a retail seller,~~  
13 ~~any administrator of the debt cancellation agreement, or a holder~~  
14 ~~to submit a corrected form for approval. Beginning as soon as~~  
15 ~~reasonably practicable after approval of the corrected form, the~~  
16 ~~retail seller, administrator, or holder shall use the corrected~~  
17 ~~form for all sales.~~

18 ~~[(f) A debt cancellation agreement form that has been~~  
19 ~~approved by the commissioner is public information subject to~~  
20 ~~disclosure under Chapter 552, Government Code. Section 552.110,~~  
21 ~~Government Code, does not apply to a form approved under this~~  
22 ~~subchapter.]~~

23 Sec. 354.005 [348.605]. ADDITIONAL REQUIREMENTS FOR DEBT  
24 CANCELLATION AGREEMENTS. (a) If a borrower or retail buyer  
25 purchases a debt cancellation agreement, the lender or retail  
26 seller must provide to the borrower or retail buyer a true and  
27 correct copy of the agreement not later than the 10th day after the

1 date of the loan or [~~retail installment~~] contract.

2 (b) A lender or holder must comply with the terms of a debt  
3 cancellation agreement not later than the 60th day after the date of  
4 receipt of all necessary information required by the lender,  
5 holder, or administrator of the agreement to process the request.

6 (c) A debt cancellation agreement may not knowingly be  
7 offered by a lender or retail seller if:

8 (1) the loan or [~~retail installment~~] contract is  
9 already protected by gap insurance; or

10 (2) the purchase of the debt cancellation agreement is  
11 required for the borrower or retail buyer to obtain the extension of  
12 credit.

13 (d) This section does not apply to a debt cancellation  
14 agreement offered in connection with the purchase of a commercial  
15 vehicle.

16 (e) The sale of a debt cancellation agreement must be for a  
17 single payment.

18 (f) A lender or holder that offers a debt cancellation  
19 agreement must report the sale of and forward money received on all  
20 such agreements to any designated party as prescribed in any  
21 applicable administrative services agreement, contractual  
22 liability policy, other insurance policy, or other specified  
23 program documents.

24 (g) Money received or held by a lender or holder or any  
25 administrator of a debt cancellation agreement and belonging to an  
26 insurance company, lender or holder, or administrator under the  
27 terms of a written agreement must be held by the lender, holder, or

1 administrator in a fiduciary capacity.

2 (h) A lender or retail seller that negotiates a debt  
3 cancellation agreement and subsequently assigns the loan or  
4 contract shall:

5 (1) maintain documents relating to the agreement that  
6 come into the lender's or retail seller's possession; and

7 (2) on request of the Office of Consumer Credit  
8 Commissioner, cooperate in requesting and obtaining access to  
9 documents relating to the agreement not in the lender's or retail  
10 seller's possession.

11 Sec. 354.006 [~~348.606~~]. REFUND FOR DEBT CANCELLATION  
12 AGREEMENTS. (a) A refund or credit of the debt cancellation  
13 agreement fee must be based on the earliest date of:

14 (1) the prepayment of the loan or [~~retail installment~~]  
15 contract in full before the original maturity date;

16 (2) a demand by the lender or holder for payment in  
17 full of the unpaid balance or acceleration;

18 (3) a request by the borrower or retail buyer for  
19 cancellation of the debt cancellation agreement; or

20 (4) the total denial of a debt cancellation request  
21 based on one of the exclusions listed in Section 354.003 [~~348.602~~],  
22 except in the case of a partial loss of the covered item [~~motor~~  
23 ~~vehicle~~].

24 (b) The refund or credit for the debt cancellation agreement  
25 can be rounded to the nearest whole dollar. A refund or credit is  
26 not required if the amount of the refund or credit calculated is  
27 less than \$5.

1           (c) If total loss or theft has not occurred, the borrower or  
 2 retail buyer may cancel the debt cancellation agreement not later  
 3 than the 30th day after the date of the loan or [~~retail installment~~]  
 4 contract or the issuance of the debt cancellation agreement,  
 5 whichever is later, or a later date as provided under the debt  
 6 cancellation agreement. On cancellation, the lender or holder, or  
 7 any administrator of the agreement, shall refund or credit the  
 8 entire debt cancellation agreement fee. A borrower or retail buyer  
 9 may not cancel the debt cancellation agreement and subsequently  
 10 receive any benefits under the agreement.

11           (d) A lender or holder may in good faith rely on a  
 12 computation by any administrator of the agreement of the balance  
 13 waived, unless the lender or holder has knowledge that the  
 14 computation is not correct. If a computation by the administrator  
 15 of the balance waived is not correct, the lender or holder must  
 16 within a reasonable time of learning that the computation is  
 17 incorrect make the necessary corrections or cause the corrections  
 18 to be made to the borrower's or retail buyer's account. This  
 19 subsection does not prevent the lender or holder from obtaining  
 20 reimbursement from the administrator or another responsible for the  
 21 debt cancellation agreement or computation.

22           SECTION 5. Section [348.124](#)(c), Finance Code, is repealed.

23           SECTION 6. This Act takes effect September 1, 2017.